

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al., \*  
\*  
Plaintiffs, \*  
\*  
v. \* 05-CV-0329 GKF-PJC  
\*  
TYSON FOODS, INC., et al., \*  
\*  
Defendants. \*

\*\*\*\*\*  
VIDEO DEPOSITION OF MIKE NANCE  
\*\*\*\*\*

ANSWERS AND DEPOSITION OF MIKE NANCE, produced as a witness at the instance of the Defendants Cargill, Inc. and Cargill Turkey Production, LLC, taken in the above-styled and -numbered cause on the 9th day of April, 2009, A.D., beginning at 8:37 a.m., before Lisa Smith, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC, located at 100 West Fifth Street, Suite 400, Tulsa, Oklahoma, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

Mike Nance

April 9, 2009

2

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRIAN S. WILKERSON

Riggs, Abney, Neal, Turpen, Orbison & Lewis, PC

502 West Sixth Street

Tulsa, Oklahoma 74119-1010

(918) 587-3161

(918) 587-9708 (Fax)

FOR THE DEFENDANTS CARGILL, INC. AND CARGILL TURKEY  
PRODUCTION, LLC:

MR. TODD P. WALKER

Faegre & Benson, LLP

3200 Wells Fargo Center

1700 Lincoln Street

Denver, Colorado 80203-4532

(303) 607-3500

(303) 607-3600 (Fax)

FOR THE DEFENDANTS GEORGE'S, INC. AND GEORGE'S FARMS,  
INC.:

MR. EARL BUDDY CHADICK

Bassett Law Firm, LLP

221 North College Avenue

Fayetteville, Arkansas 72702

(479) 521-9996

FOR THE DEFENDANT SIMMONS FOODS, INC:

MR. BRUCE W. FREEMAN

Conner & Winters, LLP

4000 One Williams Center

Tulsa, Oklahoma 74172

(918) 586-8553

(918) 586-8652 (Fax)

FOR THE DEFENDANT PETERSON FARMS, INC:

MR. CRAIG A. MIRKES

McDaniel, Hixon, Longwell & Acord, PLLC

320 South Boston Avenue, Suite 700

Tulsa, Oklahoma 74103

(918) 382-9200

(918) 382-9282 (Fax)

Mike Nance

April 9, 2009

3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ALSO PRESENT:

ANN DAVIS - Videographer

Mike Nance

April 9, 2009

6

P R O C E E D I N G S

(Exhibit No. 1 was marked.)

THE VIDEOGRAPHER: This is Tape No. 1 to the videotaped deposition of Mike Nance in the matter of State of Oklahoma versus Tyson Foods being heard before the U.S. District Court for the Northern District of Oklahoma, Case No. 05-CV-0329 GKF-PJC. This deposition is being held at 100 West Fifth, Suite 400, Tulsa, Oklahoma on 4/9/2009 at 8:37 a.m.

And I am the videographer. My name is Ann Davis. The court reporter is Lisa Smith.

Counsel will please introduce yourselves and affiliations and the witness will be sworn.

MR. WALKER: Todd Walker with Faegre & Benson representing the Cargill defendants.

MR. MIRKES: Craig Mirkes with McDaniel, Hixon, Longweil & Acord representing Peterson Farms.

MR. FREEMAN: Bruce Freeman, Conner & Winters, Simmons.

MR. CHADICK: Buddy Chadick, Bassett Law Firm, George's.

MR. WILKERSON: Brian Wilkerson, Riggs, Abney, Neal, Turpen, Orbison & Lewis in Tulsa, representing The State of Oklahoma, plaintiffs.

MIKE NANCE,

Mike Nance

April 9, 2009

7

1 having been first duly sworn, testified as follows:

2 EXAMINATION

3 BY MR. WALKER:

4 Q. Mr. Nance, I'm Todd Walker. We've met just a  
5 moment ago.

6 A. Yes.

7 Q. But the first thing I'd like to ask you, do you  
8 prefer Officer Nance, Mr. Nance? How can I best address  
9 you?

10 A. Mike.

11 Q. I'd rather be a little more formal.

12 A. Okay.

13 Q. Is Mr. Nance okay?

14 A. Yes, that's great.

15 Q. Okay. Would you please state your full name for  
16 the record.

17 A. Michael L Nance, N-A-N-C-E.

18 Q. Mr. Nance, have you ever been deposed before?

19 A. Yes.

20 Q. Okay. So you understand that you're under oath  
21 today; correct?

22 A. Yes.

23 Q. And you need to deliver truthful answers and  
24 answers that are just as truthful as you would before a  
25 Court. I know we're in an informal conference room sitting

Mike Nance

April 9, 2009

32

1 Q. Did you accompany any crews, field teams who were  
2 conducting sampling at any time?

3 A. No.

4 Q. Did you collect any samples at any time?

5 A. No, sir.

6 Q. And specifically I want to be sure that you didn't  
7 sample any litter piles or suspected litter piles; right?

8 A. No.

9 Q. Did not sample any dirt piles; right?

10 A. No.

11 Q. Didn't sample any fields?

12 A. No, sir.

13 Q. Didn't sample any water?

14 A. No, sir.

15 Q. Okay. Didn't sample any water running off of a  
16 field?

17 A. No, sir.

18 Q. Is it fair to say, I've talked with a number  
19 investigators already, you also didn't conduct your work in  
20 the rain; right?

21 A. No.

22 Q. Is that a correct statement?

23 A. Yes, it's a correct statement. Yes.

24 Q. And -- so you didn't have an opportunity to  
25 personally observe any run-off leaving a field during a

Mike Nance

April 9, 2009

33

1 rainstorm, did you?

2 A. Not that I can recall.

3 Q. You said that you went to some properties to ask  
4 people if they were willing to allow samples to be taken  
5 from their wells; correct?

6 A. Yes.

7 Q. But you didn't take any samples of well water, did  
8 you?

9 A. No, sir.

10 Q. And you didn't have a sampling crew standing there  
11 with you who then went and took samples of the well water  
12 if they said it was okay, did they?

13 A. No, sir.

14 Q. In what geographic-area, town do you recall that  
15 these -- that your visits regarding getting permission for  
16 well sampling was taking place? Where did you do that?

17 A. Pretty much throughout the Illinois River  
18 Watershed.

19 Q. How do you -- well, I'll ask it. Do you know  
20 where the Illinois River Watershed is?

21 A. My understanding is by virtue of the -- the data  
22 that I was provided by Steve Steele.

23 Q. So your understanding was is if you went to a  
24 location for -- to go make observations, that you were  
25 making those observations in the Illinois River Watershed?

Mike Nance

April 9, 2009

78

1 A. No, sir.

2 Q. Considering all the investigatory work that you  
3 did and your experience as an investigator, did you observe  
4 the violation of any laws in the investigations that you  
5 conducted?

6 MR. WILKERSON: Object to form.

7 A. Well, I'm not familiar with, one, Arkansas laws or  
8 laws pertaining to the spreading of poultry waste. I'm  
9 more familiar with -- with criminal laws here in Oklahoma.

10 Q. (BY MR. WALKER) And obviously, I can only ask you  
11 about the extent of your knowledge of the law. But to the  
12 extent of your knowledge of the law, did you observe any  
13 violations of law in the course of your work?

14 MR. WILKERSON: Object to the form.

15 A. Well, again, I made a lot of observations and I'm  
16 not sure if -- if -- if I was aware of the -- of things  
17 that I observed or breaches of the law or not.

18 Q. (BY MR. WALKER) And again, I can only ask you  
19 about what -- what your understanding is of the law,  
20 realizing that there are limitations and you don't know  
21 every law and neither do I. What I'm asking is, did you,  
22 based on your experience, perceive any violations of the  
23 law based on the activities that you saw?

24 MR. WILKERSON: Okay. Object to form.

25 A. Again, I -- I wasn't -- I wasn't cognizant of a --

Mike Nance

April 9, 2009

79

1 a law that was being broken.

2 Q. (BY MR. WALKER) That's all I'm asking.

3 A. Okay.

4 Q. Did you report any of the observations that you  
5 made to any state agency?

6 A. I can only assume that the worksheets that we  
7 completed were reported to the Attorney General's office.

8 Q. And -- and that's not my question. I don't need  
9 you to assume. I'm asking if you personally reported any  
10 of the activities you saw to any state agency.

11 A. No.

12 Q. You reported all of your observations to  
13 Mr. Steele; right?

14 A. Yes.

15 Q. And only Mr. Steele?

16 A. Yes. Whom I believe to be an agent for the State  
17 of Oklahoma and the Attorney General's Office, I might add,  
18 so --

19 Q. Did you ever call the Oklahoma Department of  
20 Agriculture about any observations you saw?

21 A. No, sir.

22 Q. Did you ever contact the Oklahoma Department of  
23 Environmental Quality about observations you saw?

24 A. No, sir.

25 Q. Did you ever contact any person affiliated with

Mike Nance

April 9, 2009

87

1 whether or not you had sampled a whole variety of things in  
2 the -- in the watershed. And I just -- some people can  
3 take that word to mean different things. I just want to  
4 make sure that for every one of those instances you never  
5 actually collected a sample.

6 A. That's correct. I never collected a sample.

7 Q. Some people might play word games and say that  
8 they never analyzed a sample. So I just wanted to clear  
9 that.

10 There's an attorney in this case and his last  
11 name is Nance. Are you related to that attorney?

12 A. If -- if I am, I'm -- I'm -- I'm unaware of him or  
13 my relationship to him.

14 Q. He's not your brother-in-law?

15 A. No.

16 Q. While you were in the watershed, did you have any  
17 instance to visit a Peterson contract grower farm that  
18 you're aware of -- or not visit, maybe that's the wrong  
19 word, to investigate or to -- to document?

20 A. I think -- I think, yes.

21 Q. As you sit here today, do you have any independent  
22 recollection of those Peterson contract grower farms?

23 A. No, sir.

24 Q. Do you recall ever seeing any violations of law at  
25 those various farms?

Mike Nance

April 9, 2009

88

1 MR. WILKERSON: Object to form.

2 A. No, sir.

3 MR. MIRKES: That's all the questions I have.

4 Thank you, sir.

5 THE WITNESS: Thank you.

6 EXAMINATION

7 BY MR. CHADICK:

8 Q. Mr. Nance, we met earlier. I represent George's,  
9 which is an integrator based in Springdale, Arkansas. In  
10 reviewing the forms and the documents that I received from  
11 the State, I couldn't find any form where you had inspected  
12 a George's growers farm. Do you have any recollection of  
13 inspecting a George's growers farm?

14 A. I recall seeing George's signs, but I have no  
15 independent recollection of a specific farm that I -- that  
16 I documented.

17 Q. If we were to find some forms, then I think you  
18 testified earlier you'd be pretty much restricted to what  
19 it says on the forms, as far as your recollection?

20 A. Yes, sir.

21 Q. Okay. When you -- I think you said you put  
22 20/20/20 on your flowers, do you know what 20/20/20 is?

23 A. That's the N, P and K, the nitrogen, phosphorous  
24 and potassium content.

25 Q. And did you calibrate your -- when you were